IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.170 OF 2000

Mr. Valeriano Mendoca
(since deceased)
by his legal heirs :

1. Mrs. Urcicia Mendonca,
major,
resident of Gandaulim,
Cumbarjua, Goa.

2. Mrs. Maria Arcancela Gonsalves,
major,
resident of Piedade, Divar, Goa.

3. Mrs. Benedita Mendonca,
major,
resident of Gandaulim,
Cumbarjua, Goa.

4. Mr. Marcelino Mendonca,
major,
resident of Gandaulim,
Cumbarjua, Goa.

5. Mrs. Jacquelino Noronha,
major,
resident of Ucassaim,
Bardez, Goa. ... Petitioners.

Versus

1. Mr. John S. Mendonca,
major,
resident of Gandaulim,
Cumbarjua, Goa.

2. Mr. Agnelo Gonsalves,
major,
resident of Piedade,
Divar, Goa.

3. Mr. Jeffery Noronha,
major,
resident of Cavelossim,
Bardez, Goa.

4. Jt. Mamlatdar (I)
of Tiswadi Taluka
at Panaji, Goa.

5. Collector of North Goa District,
at Panaji, Goa. ... Respondents.

Ms. Shambhavi Rao, Advocate for the petitioners.

None for the respondents.

CORAM : J.N. PATEL, J.

DATE : NOVEMBER, 9 2006.

ORAL JUDGMENT :

The petitioner has impugned the judgment and order dated 25.3.1991 passed by the Joint Mamlatdar (I) of Tiswadi Panaji so also of the Collector, North Goa dated 14.7.1999 under which the revision preferred by the original petitioner came to be rejected and the order of the lower Court was upheld.

2. The case of the petitioner is that, they are the owners and in possession of a plot of land which is sub division 17 of survey no.31 of Gandaulim village of Tiswadi Taluka. Whereas the respondent/original

plaintiff is the owner of adjoining property i.e. sub division 16 of survey no.31. The respondent filed an application dated 11.7.1986 before the Mamlatdar of Tiswadi alleging that there was a private passage belonging to one Confraria of the Church of St. Blaise, which was being used by him and the public in general for having access to his property and that the original defendant illegally constructed a loose stone wall and a gate of bamboo sticks, thereby causing hardship to him and others for having access to his property and wrongfully obstructed the passage. The said application was registered as case No.MCA No.2/88 and assigned to the Court of Joint Mamlatdar (I) of Tiswadi. By the impugned judgment and order dated 25.3.1991, the respondent no.4 held that the application dated 11.7.1986 of the plaintiff Shri John Mendonca is allowed. The defendant i.e. the original petitioner shall remove the blockage put up by him on the passage for the free entry into his property. It is this order which has been upheld by the Collector.

3. The learned Counsel for the petitioners who are the legal representatives of the original defendant Shri Valeriano Mendonca submits that, the petitioners are aggrieved by certain observations made in the judgment as regards right of the public to have access to the well which is situated to the east of his property i.e. on the boundary of sub division 18 and 19 of survey no.31. It is submitted that it was not the case of the plaintiff when he addressed the application to the Mamlatdar

that public has access through the property of the petitioner i.e. sub division 17 of survey no.31 for going to the well, but the application was restricted to the grievance made by the original plaintiff of obstructing his right of passage of entering his property i.e. sub division 16 of survey no.31. It is submitted that the original defendant did not erect any stone wall or gate so as to obstruct the passage of the original plaintiff, which access is available from the public road which is abutting the western boundary of sub division 15 of survey no.31, but the stone wall and gate has been erected by the original defendant at the end of the passage so as to prevent trespass into his property i.e. sub division 17 of survey no.31. It is therefore submitted that these observations adversely affect the right of the petitioners as it extends the common passage through his property to the extent of having access to the well.

4. With the able assistance of the learned Counsel for the petitioner, this Court has gone through the records and proceedings and the judgment and order passed by the Mamlatdar as well as the order in revision passed by the Collector, North Goa, Panaji and this Court finds that it was never the plaintiff's case that there is a lane belonging to the Church of Gandaulim which is in use for access to the common well which goes through the property of the defendant. It was deposed so by the witnesses examined by the plaintiff in support of his claim that the original defendant should not obstruct this passage through the lane

which is by way of access to the common well through his property. This part of the evidence was beyond the scope of the dispute raised by respondent and even it was not the claim made by the original plaintiff.

5. It appears that these observations in the impugned judgment and order were beyond the scope of the relief sought for by the original plaintiff and as it was not in issue whether the lane or passage extends upto the common well through the property of the original defendant i.e. sub division 17 of survey no.31. These observations/findings based on the oral evidence of the witnesses examined by the plaintiff cannot be sustained as not relevant for the decision of the plaintiffs claim of right of way to his property.

6. It is also made clear that the operative part of the order which has been passed by the Joint Mamlatdar also do not state that the passage or lane provides for access through the property of the petitioners to reach the well as the plaintiff never claimed any right of access to the well through the property of the original defendant. Therefore, the order that the defendant shall remove the blockage put up by the defendant on the passage for the free entrance to his property cannot be read in the context of the observations made in the judgment so as to mean that the passage/lane extends through and beyond the property of the petitioners by way of access to the well.

7. Therefore, the said findings arrived by the Joint Mamlatdar and upheld by the Collector in revision which does not constitute the operative part of the order passed by the Joint Mamlatdar nor was in issue between the parties, are quashed and set aside.

8. Rule is made absolute in the aforesaid terms with no orders as to costs.

J. N. PATEL, J.

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